

## Message Text

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ACTION EA-10

INFO OCT-01 IO-10 ISO-00 L-02 AID-05 DPW-01 AF-06 ARA-10

EUR-12 NEA-09 SR-02 ORM-01 CIAE-00 DODE-00 PM-03 H-02

INR-07 NSAE-00 NSC-05 PA-02 PRS-01 SP-02 SS-15

USIA-15 SCA-01 FDRE-00 OPR-02 HEW-06 /130 W

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R 180921Z APR 75

FM USMISSION GENEVA

TO SECSTATE WASHDC 2195

UNCLAS SECTION 1 OF 2 GENEVA 2711

EO 11652: N/A

TAGS: ICRC, PARM, VS

SUBJ: LAWS OF WAR CONFERENCE: EVACUATION OF VIETNAMESE ORPHANS

REF: GENEVA 2699

1. U.S. REP (ALDRICH) REBUTTAL TO COMMUNIST APPEAL ON ORPHANS HAS BEEN GIVEN TO SECRETARY GENERAL OF CONFERENCE FOR CIRCULATION AS CONFERENCE DOCUMENT. TEXT FOLLOWS:  
BEGIN TEXT:

COMMENTS BY THE REPRESENTATIVE OF THE UNITED STATES OF AMERICA ON THE "APPEAL" OF SOME REPRESENTATIVES/CONCERNING THE EVACUATION OF ORPHANS FROM THE REPUBLIC OF VIETNAM.

I REGRET THAT THIS ISSUE HAS BEEN BROUGHT BEFORE THESE CLOSING PLENARY MEETINGS OF THIS SECOND SESSION OF THE DIPLOMATIC CONFERENCE ON THE REAFFIRMATION AND DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW APPLICABLE IN ARMED CONFLICTS. IT IS, OF COURSE, UNDERSTANDABLE. IF THE ARMY OF MY COUNTRY WERE DESEIGNING THE CAPITAL OF A NEIGHBORING COUNTRY, I WOULD ALSO BE ANXIOUS TO DISTRACT ATTENTION FROM THAT FACT. BUT I HAVE NO WISH TO ENGAGE IN POLITICAL DEBATE AND SHALL  
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MERELY TRY TO CLARIFY THE FACTS CONCERNING THE

ADOPTION OF CHILDREN FROM THE REPUBLIC OF VIETNAM, AND SUMMARIZE MY VIEWS, WHICH ARE THOSE OF MY GOVERNMENT, ON THE LEGAL QUESTIONS RAISED BY THE AUTHORS OF THIS "APPEAL".

IN THE FIRST PLACE, THE RECENT PUBLICIZED DEPARTURE FROM VIETNAM OF A NUMBER OF ORPHANS IS MERELY THE PRESENT, SOMEWHAT MORE URGENT, PHASE OF A HUMANITARIAN ACTIVITY THAT HAS EXISTED FOR YEARS AND WHICH IS IN NO WAY LIMITED TO THE REPUBLIC OF VIETNAM AND THE UNITED STATES. ADOPTION AGENCIES HAVE LONG EXISTED IN MANY COUNTRIES TO TRY TO BRING TOGETHER RESPONSIBLE ADULTS WHO WISH TO ADOPT CHILDREN AND ORPHANS SUITABLE FOR ADOPTION. THESE ORPHANS ARE FOUND IN MANY COUNTRIES, AND THEY ARE RECEIVED BY NEW PARENTS IN MANY COUNTRIES. IN THE CASE OF VIETNAM, LESS THAN HALF OF THE ORPHANS WHO LEFT THAT COUNTRY FOR ADOPTION ABROAD DURING THE PERIOD FROM JANUARY 1970 THROUGH DECEMBER 31, 1974, WERE ADOPTED WITHIN THE UNITED STATES. MOREOVER, THE ONLY INVOLVEMENT OF MY GOVERNMENT IN THIS PROGRAM HAS BEEN TO EXPEDITE VISA PROCEDURES AND, RECENTLY, BECAUSE OF WELL-KNOWN DEVELOPMENT SIN VIETNAM, TO PROVIDE SOME AIR TRANSPORTATION.

THE DECISION TO ENTRUST THESE CHILDREN TO ADOPTION AGENCIES AND PERMIT THEIR DEPARTURE FROM VIETNAM IS MADE BY THE MINISTRY OF SOCIAL WELFARE OF THAT COUNTRY WHICH HAS DECIDED THAT THIS WOULD BE IN THE BEST INTERESTS OF THE CHILD IN EACH CASE. THE ORPHANS TRAVEL FROM VIETNAM IN THE CUSTODY OF LICENSED PRIVATE INTERNATIONAL ADOPTION AGENCIES, WHICH HAVE EITHER ALREADY DECIDED UPON THE PROSPECTIVE PARENTS FOR EACH CHILD OR, AT A MINIMUM, HAVE AN ADEQUATE GROUP OF ACCEPTABLE PROSPECTIVE PARENTS FROM WHICH THEY MAY MAKE THE SELECTION. THUS, THIS PROGRAM DIFFERS IN NO WAY FROM SIMILAR PROGRAMS OF THESE ADOPTION AGENCIES AROUND THE WORLD, EXCEPT THAT, RECENTLY, VISA AND TRANSPORTATION ARRANGEMENTS HAVE BEEN ACCELAERATED AS A RESULT OF THE UNCLASSIFIED

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TRAGIC EVENTS IN VIETNAM.

MY DELEGATION HAS PREPARED THE ATTACHED FACT SHEET TO EXPLAIN IN GREATER DETAIL THE FACTS OF THIS MATTER.

WITH RESPECT TO LEGAL QUESTIONS, I NOTE THAT THE "APPEAL" ASSERTS THAT THE DEPARTURE OF ORPHANS

FROM SOUTH VIETNAM CONSTITUTES A VIOLATION OF ARTICLES 24 AND 50 OF THE FOURTH GENEVE CONVENTION OF 1949. PRESUMABLE, IT IS THE REPUBLIC OF VIETNAM THAT IS ACCUSED OF THESE VIOLATIONS, BUT TO READ THE "APPEAL", ONE WOULD THINK IT WAS THE U.S. THAT WAS ACCUSED. IN ANY EVENT, I BELIEVE THESE LEGAL ACCUSATIONS HAVE NO MERIT FOR THE FOLLOWING REASONS.

FIRST, ARTICLE 50 CLEARLY HAS NO APPLICATION. IT PLACES OBLIGATIONS ON BELLIGERENT OCCUPANTS CONCERNING CHILDREN IN OCCUPIED TERRITORY. THE CHILDREN IN QUESTION ARE NOT, OF COURSE, LEAVING OCCUPIED TERRITORY, AND NEITHER THE GOVERNMENT OF THE REPUBLIC OF VIETNAM NOR THE U.S. ARE OCCUPYING POWERS WITHIN THE AMBIT OF THAT ARTICLE. ONE MAY ASK, HOWEVER, WHETHER THE AUTHORITIES OF THE DRV MAY BE EXPECTED TO ACT IN CONFORMITY WITH THOSE

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R 180921Z APR 75

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TO SECSTATE WASHDC 2196

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PROVISIONS OF THE GENEVA CONVENTIONS APPLICABLE TO OCCUPIED TERRITORY IN THAT PART OF THE REPUBLIC OF VIETNAM WHICH IS OCCUPIED BY ITS ARMED FORCES. WILL IT, FOR EXAMPLE, REFRAIN FROM ENLISTING CHILDREN IN "FORMATIONS OR ORGANIZATIONS SUBORDINATE TO IT", AS REQUIRED BY ARTICLE 50?

WITH RESPECT TO ARTICLE 24, THAT ARTICLE  
CLEARLY IS APPLICABLE TO THE REPUBLIC OF VIETNAM,  
BECAUSE ARTICLE 24 IS FOUND IN THAT PART OF THE  
CONVENTION WHICH COVERS THE WHOLE OF THE POPULATION  
OF THE COUNTRIES IN CONFLICT. HOWEVER, I FIND  
NOTHING IN THE ARTICLE OR IN THE RELEVANT COMMENTARY  
OF THE ICRC WHICH INDICATES THAT IT WAS INTENDED  
TO DEAL WITH ADOPTION OR TO BRING TO A HALT THE  
NORMALLY OPERATING AND RESPONSIBLE ACTIVITIES OF  
THE PRIVATE, INTERNATIONAL ADOPTION AGENCIES.  
THE REQUIREMENT THAT THE EDUCATION OF CHILDREN "SHALL,  
AS FAR AS POSSIBLE, BE ENTRUSTED TO PERSONS OF A  
SIMILAR CULTURAL TRADITION" SHOULD NOT, I SUBMIT,  
PREVENT THE CONTINUANCE OF HUMANITARIAN ADOPTION  
PROGRAMS. ASIDE FROM THE LIMITS OF THE POSSIBLE --  
AND I BELIEVE FAR MORE ORPHANS ARE ADOPTED AND CARED  
FOR IN VIETNAM THAN ARE ADOPTED ABROAD -- ONE  
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WONDERS ABOUT THEIR RELIGIOUS AND CULTURAL FUTURES  
IF THEY HAD REMAINED IN TERRITORY NOW OCCUPIED BY  
THE DEMOCRATIC REPUBLIC OF VIETNAM. MOREOVER,  
ALTHOUGH ACCURATE STATISTICS ARE APPARENTLY NOT  
KEPT ON A RACIAL BASIS, IT APPEARS THAT MORE  
THAT HALF OF THE CHILDREN LEAVING VIETNAM FOR  
ADOPTION ABROAD ARE OF MIXED PARENTS, IN ALL  
PROBABILITY MOSTLY OF AMERICAN SOLDIER FATHERS. I  
AM ALSO INFORMED THAT MOST OF THOSE WHO ARE NOT  
OF MIXED PARENTAGE SUFFER FROM MEDICAL PROBLEMS OR  
DISABILITIES WHICH COULD BEST BE TREATED ABROAD.

I HOPE THAT THESE CONSIDERATIONS MAY SERVE TO  
PLACE IN PROPER CONTEXT THE UNFORTUNATE AND UNJUSTIFIED  
ALLEGATIONS WHICH HAVE BEEN MADE IN THE "APPEAL"  
BY A NUMBER OF DELEGATIONS. END TEXT.  
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